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INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED, D/B/A AMERITECH INDIANA PURSUANT TO I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS FOR COMMISSION REVIEW OF VARIOUS SUBMISSIONS OF AMERITECH INDIANA TO SHOW COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996.	)	CAUSE NO. 41657

SUBMISSION OF INITIAL COMMENTS OF AT&T

AT&T Communications of Indiana, GP and TCG Indianapolis ("AT&T"), by counsel, hereby submit its Initial Comments.

Respectfully submitted,

AT&T COMMUNICATIONS OF INDIANA, INC.

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CERTIFICATE OF SERVICE

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STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED, D/B/A AMERITECH INDIANA PURSUANT TO I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS FOR COMMISSION REVIEW OF VARIOUS SUBMISSIONS OF AMERITECH INDIANA TO SHOW COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996	)	CAUSE NO. 41

INITIAL COMMENTS OF AT&T

December 11, 2002

EXECUTIVE SUMMARY

Ameritech Indiana's "Checklist Informational Filing" is in the form of a "draft" § 271 application to the FCC, consisting of "drafts" of affidavits of its witnesses and a brief (also marked as a "draft") in support. Even cursory review of Ameritech's filing, moreover, reveals it to be at a strikingly high level of generality. The factual assertions of Ameritech's witnesses are conclusory, and the claims made in its brief are bare assertions, largely unsupported by evidentiary-grade facts. These shortcomings permeate Ameritech's affidavits and reveal the rushed, "cookie-cutter" nature of the filing. This is at best a "working" draft – a work in progress rather than an all-but-final product.

In fact, Ameritech's filing reveals how far Ameritech is from being able to advance a credible case that it has satisfied the requirements of § 271. It is not just that Ameritech Indiana needs to refine certain aspects of its compliance with checklist items; rather, there is basic work to be done on the building blocks that support competitive entry and that are a prerequisite to any viable § 271 application.

In fact, Ameritech Indiana's filing comes not at a time dictated by Indiana facts and circumstances but rather one chosen arbitrarily by Ameritech in an effort to expedite § 271 approval. That Ameritech's claims of checklist compliance are premature is evidenced, as a threshold matter, by the seriously-lagging state of local competition in Indiana. Ameritech in its filing has seriously exaggerated the amount and status of local competition in its markets. As shown in the affidavit of Mr. Turner on behalf of AT&T, and indeed by the Commission's own publicly available data, the information presented by Ameritech is systematically biased and misleading. On responsible analysis, the level of competition in Indiana is paltry, and is actually (as witnessed in the thinning ranks of

CLECs) in decline. Local competition in Indiana is far less developed than in neighboring and comparable states – a fact that should give the Commission serious pause.

Underlying the striking failure of any substantial degree of local competition to develop in Indiana is Ameritech's failure to complete basic work on the foundations for competitive entry. As evidenced in the affidavits of Ms. Fettig and Mr. Noorani, essential components that might support the development of local competition are simply missing in Indiana. Product definitions remain unavailable or unsatisfactory for items such as UNE-P and line splitting, and, Ameritech has appealed in federal and state courts *every single* Commission decision that might positively impact local competition. Indeed, it is telling that the orders cited by the Commission in its October 31, 2002 Process Order as directly impacting Ameritech's § 271 application have been appealed by Ameritech. (Process Order, p. 8). Moreover, since the Process Order has been issued, Ameritech has appealed the Commission's Performance Assurance Plan that applies to the key public interest element of this § 271 application. Thus, Ameritech is literally seeking to vitiate every single element of its own § 271 application.

The defects in Ameritech's application extend to its wholesale systems serving CLEC competitors. BearingPoint's third party test of Ameritech's OSS has to date revealed dozens of critical deficiencies in Ameritech's systems, to which the company has struggled to respond, let alone remedy. Under the most optimistic if not unrealistic of scenarios, the final report of BearingPoint Consulting (formerly KPMG Consulting) on Ameritech's OSS will not be completed until February or March, 2003. In short, the pricing, terms and conditions for products that are essential to the opening of Indiana

local exchange markets to competition remain unresolved, and Ameritech's wholesale performance remains un-validated. Ameritech's Informational Filing and the responses that will be submitted to it will no doubt serve to show just how much work remains to be done before Ameritech will be in a position to offer a credible § 271 application for Indiana.

New competitors cannot and will not enter Indiana local markets in force until these issues are addressed and resolved, and demonstrated to have been resolved, with an adequate level of reliability. Not only must they be the subject of definitive Commission orders, Ameritech must comply with them (instead of litigating them in the courts or resorting to self-help noncompliance). And they must be demonstrated, through commercial experience, to be adequate to the task of supporting competition before Ameritech can credibly claim to be in compliance with § 271's market-opening requirements.

Ameritech's Informational Filing is premised on the notion that it is in a position now to show "what" it is providing in terms of the 271 checklist, and that in the future following completion of the third party OSS test it will be able to show "how" it is providing wholesale services to CLECs, i.e., whether they are being provided in a nondiscriminatory manner. The first point (the "what") is tenuous, however, given Ameritech Indiana's efforts through litigation to sweep away the entire body of pro-competitive decisions rendered by this Commission. Moreover, the dichotomy between the "what" and the "how" that Ameritech suggests is spurious. With respect to the key items of the checklist – in particular interconnection and access to unbundled network elements, including OSS, the Act's requirement is that Ameritech provide

nondiscriminatory access, and that such access continue *after* receipt of Section 271 authority. That is, these items and elements must be on a par with what Ameritech provides to itself in its retail activities and must not disadvantage CLECs relative to Ameritech in its retail operations now and following the receipt of Section 271 authority. "How" it is providing them is integral to "what" Ameritech is providing and will provide. Before any reliable determinations can be reached on the degree of Ameritech's checklist compliance, moreover, the Commission will need to conduct evidentiary hearings, supported by the usual fact-finding processes of cross examination.[1] This is certainly the case for the core issues of whether Ameritech is providing nondiscriminatory interconnection and access to UNEs, including OSS, and other items. The hearings should also examine Ameritech's efforts – both in the courts in Indiana and in Washington -- to eliminate the very competition that provides the basis for the application. Discovery and on-the-record hearings are the essential basis for testing claims and assertions and resolving factually contested issues. The Commission should reject efforts to short-circuit that process.

AT&T in this filing does not undertake to address every checklist item, and instead will focus on those that are of greatest significance to AT&T (other parties undoubtedly will comment on additional items and further issues). The principal areas addressed below are as follows:

Item i. – Interconnection: Certain Ameritech Indiana interconnection and collocation policies do not satisfy federal and state requirements.

Item ii. -- Nondiscriminatory Access to Unbundled Network Elements (also Item iv.-- Unbundled Loops; item v. Local Transport, and vi.—Local

[1] The Commission already allows discovery. *See*, Process Order, p. 13.

Switching): Ameritech's intention to comply with Commission orders regarding access to UNE combinations remains unclear today; indeed, the Company is both appealing the Commission's decisions requiring the offering of UNE combinations (namely, the AT&T arbitration proceeding, the 40611 orders, and the pricing established in 40611-S1 (Phase 1). Ameritech has resisted making available line splitting as it is required to do. Ameritech has not shown that it provides nondiscriminatory access to its operations support systems (OSS)(and it in fact is not doing so), and Ameritech's unaudited performance measurements indicate that it is not providing nondiscriminatory service to CLECs accessing UNEs.

OSS is an all-important issue deserving special discussion. OSS is a separate UNE, and it also implicates most other checklist items. AT&T, in the Affidavit of Mr. Willard and Ms. Webber has supplied specific and factual information on the state of Ameritech's OSS. AT&T's experience thus far indicates that Ameritech has failed to develop its OSS to a level that provides the needed functionality and true nondiscriminatory access.

After failing for years to update its OSS and thus allowing them to lag behind those of the other RBOCs, within the past 20 months SBC/Ameritech has implemented two major "upgrades" to its OSS. Willard/Webber Aff., ¶¶ 27-44. These OSS releases have been marked by numerous violations of Ameritech Change Management Process and have not delivered promised levels of functionality or performance. *Id.* AT&T's experience using the LSOG 4 interfaces revealed a variety of serious flaws in the OSS systems, a preponderance of highly manual processes that Ameritech uses in conjunction

with those systems, and a support environment that does not allow CLECs to test and implement OSS releases in a timely, efficient or accurate manner. *See, e.g.*, Willard/Webber Aff., ¶¶ 24, 115.

This experience has been confirmed by the BearingPoint third-party testing conducted under the auspices of this Commission and other commissions in the Ameritech region. That testing has confirmed many of the flaws AT&T has uncovered using Ameritech's OSS. The important insight to be gained from the BearingPoint work is that the defects in Ameritech's OSS are not isolated, or minor, but pervasive.

Before attempting to reach any conclusions concerning Ameritech's OSS, the Commission should await the final results of BearingPoint's third-party testing and CLEC commercial experience on Ameritech's operating systems, *including* LSOG 5. *See* Willard/Webber Aff., ¶ 118.

Ameritech's unsettled OSS situation is not the only cause for concern and uncertainty. As noted above, Ameritech has appealed all of the Commission's orders establishing TELRIC pricing and UNE combinations, as well as the Section 271 Remedy Plan ordered in this cause, creating legal and regulatory paralysis in Indiana, and forcing the Commission and CLECs to expend substantial resources litigating Ameritech's multiple claims.

With respect to the **Public Interest** requirement, Ameritech's refrain that its entry into the long distance market will spur additional local and long distance competition, lower prices and provide innovative services for customers is familiar, but wrong. If anything, the experience in Texas to which Ameritech points demonstrates that premature RBOC entry into the long distance market only increases the likelihood of a vertically

entrenched monopoly. Indeed, the historical record of Ameritech's noncompliance – and specifically its track record in Indiana -- demonstrate that conventional regulatory approaches are inadequate to achieve and sustain satisfactory market-opening results. In order to assure that this § 271 review is not just an elaborate regulatory "bait and switch," the Commission should in this proceeding establish that each wholesale obligation is a continuing one that Ameritech cannot alter without the express approval of the Commission.

Moreover, conventional approaches do not reach the source of the problem, which is the incentive of the owner of bottleneck network facilities to favor its own retail activities and disadvantage competitors. That incentive inevitably will manifest itself in myriad ways, all of them designed to deny or impair the quality of access by competitors to the network owner's facilities. Instead, there is a tool – structural separation -- that is less regulatory and more geared to correcting the underlying incentive structure that motivates Ameritech's conduct. An independent Ameritech network organization would lack the incentive to favor Ameritech and, in fact, would have every incentive to quickly and efficiently implement useful network element arrangements and OSS systems to foster local competition. AT&T urges the Commission to consider structural separation in conjunction with its review of Ameritech Indiana's § 271 Application, and to proceed to require Ameritech Indiana to file a structural separation plan in Cause No. 41998.

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INITIAL COMMENTS OF AT&T

Pursuant to the Commission's October 31, 2002 Process Order, AT&T Communications of Indiana, GP and TCG Indianapolis (collectively, "AT&T") submit their comments and supporting affidavits in response to the Checklist Informational Filing and Draft Affidavits of SBC Communications, Inc., Ameritech Indiana, and Ameritech Long Distance, dated September 26, 2002.

As set forth below and in the accompanying AT&T affidavits, Ameritech's "Checklist Informational Filing" is premature, incomplete, and deficient on its face, and it fails to support the relief Ameritech seeks. The Commission should conduct full evidentiary proceedings on contested checklist items, but only after basic issues are resolved concerning Ameritech's product offerings and Ameritech is in a position to submit factual evidence of actual compliance.

I. INTRODUCTION AND BACKGROUND

In these Comments, AT&T focuses on the checklist concerns that have long been at the core of Section 271 shortcomings for Ameritech: nondiscriminatory access to unbundled network elements ("UNEs"), including operations support systems ("OSS") and the allied performance measurement issues. Like the Commission, AT&T has a pressing interest in these issues: nondiscriminatory and robust access to these elements is essential to broad scale entry into residential markets, which necessarily is based on the UNE Platform ("UNE-P"). Ameritech has not shown that it meets these central checklist elements, however, and where it nominally does, it is vigorously attempting in the Indiana appellate courts (as well as in Washington) to eliminate competition.

Indeed, Ameritech has ignored or appealed *every single* Commission order directing it to price and provision the UNE-P, the only product offering to date that has engendered broad-based residential competition. Ameritech similarly has adamantly opposed requirements to provide prices, terms and conditions for line sharing and line splitting, product offerings that allow CLECs to compete against Ameritech's retail DSL offering. Indeed, as discussed at greater length below, Ameritech has yet to establish final, Commission-approved terms, conditions, and pricing for essential product offerings, including enhanced extended links ("EELs"), line sharing, line splitting, and loop qualification.

Thus, we still lack evidence both as to "what" Ameritech Indiana will provide as well as "how" it will implement the elements it describes. Neither of these questions, moreover, will be determined simply by Commission order; they can only be determined once Ameritech implements the Commission's orders in the market. Ameritech's

preference for appealing, rather than implementing, nearly each and every Commission order speaks volumes about its interest in and commitment to opening its monopoly local market to competition.

Additionally, the BearingPoint test of Ameritech's Operational Support Systems ("OSS") is not yet completed (and will not until February or March, 2003), and those systems have not yet been adequately tested out in the market. Performance data on Ameritech's OSS have yet to be validated by BearingPoint.

Until all of these things occur, however, Ameritech can only *claim* that these crucial checklist items are met, and any Ameritech "showing" is only an assertion or promise of future performance. The Commission should not act favorably on Ameritech's unsupported assertions at this time. It should instead require further investigation into Ameritech's compliance with the checklist once Ameritech is in a position to make a definitive showing of compliance. That investigation should take the form of conventional evidentiary hearings that employ cross-examination to resolve the contested facts. That is the only way the Commission can cut through the generalities and bare assertions in Ameritech's affidavits and get to the real facts concerning Ameritech's present and future compliance with the Section 271 checklist.

Ameritech's efforts to gain long distance authority date back to before the Telecommunications Act of 1996 ("TA96" or the "Act"). What is remarkable is that Ameritech has ostensibly been at the process of opening its markets for so long, yet as discussed below there is so little "opening" (to wit: actual competition) in the Indiana local market.

In January of 1997 Ameritech first applied for relief under Section 271 of the Act through its Michigan operating company, Ameritech Michigan. After Ameritech Michigan withdrew and refiled that application, the Federal Communications Commission ("FCC") ruled on Ameritech Michigan's 1997 application in August of that year. The FCC rejected the application based on its failure to meet the Section 271 checklist with respect to interconnection, nondiscriminatory access to OSS, and 911/E911 services.[2] Because it found that Ameritech Michigan had failed to demonstrate that it had implemented the competitive checklist in those respects, the FCC did not reach the issue of whether the remaining checklist items had been met.[3] The FCC proceeded, however, to articulate its "concerns," and to set forth a comprehensive "roadmap" to Section 271 compliance on the part of Ameritech Michigan and the RBOCs generally in future applications.[4]

Ameritech's response to that order was telling. Although in initial press statements Ameritech indicated that it would be re-applying shortly, it did not, and later that fall Richard Notebaert, Ameritech's then-chairman, was quoted as saying that after analyzing the FCC's "roadmap" order Ameritech had concluded that it would take considerable time (more than a year) and money (over $200 million) to comply. Apparently Ameritech decided against attempting to satisfy the § 271 roadmap. Instead, according to the companies' subsequent filings with the Securities and Exchange Commission, Mr. Notebaert and Mr. Whitacre, SBC's Chairman, began discussion of the

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[2] *In re the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order (rel. August 19, 1997) (hereinafter "*Ameritech Michigan 271 Order*") at ¶ 403.

[3] Similarly, the FCC declined to address the issue of whether Ameritech Michigan's application was consistent with the public interest, convenience, and necessity. *Ameritech Michigan 271 Order*, at ¶ 6.

SBC/Ameritech merger in February of 1998. *See Notebaert Says Ameritech Can't Follow FCC Sec. 271 "Roadmap"*, Communications Daily, October 29, 1997.

The plain facts are that from late 1997 through early 2000, Ameritech pursued the merger path rather than a § 271 compliance path. During this time it did little or nothing to open its local markets to competition. To the contrary, Ameritech continued to litigate nearly every case involving its obligation to provide access to its network. In Indiana it refused to provide vital product offerings such as the UNE-P. Moreover, its all-important OSS remained virtually unchanged from the levels that the FCC had found deficient in 1997. As discussed in the Willard/Webber Affidavit, only in March of 2001 did Ameritech issue a systems upgrade to move its OSS from LSOG 1.7 (their 1997 state) to LSOG 4.0. (Willard/Webber Aff., ¶¶ 27, 30.)[5] Even now, testing of Ameritech's OSS is not yet complete, and under current timetables that process won't be concluded until March 2003, at the earliest.

What is most regrettable is that the diversion of Ameritech Indiana's attention, investment and effort from opening its local markets consumed at least two years of valuable time – time in which other states in this region and elsewhere have moved ahead. The level of competition in Indiana is markedly below that of its sister states in the region (e.g., Illinois and Michigan). The unmistakable fact that Indiana has fallen behind, however, should not cause this Commission to cut corners in an effort to "make up for lost time." That Indiana has lagged is the fault of one party and one party alone: Ameritech. In an ironic yet appropriate twist of fate, Ameritech's five-year strategy in Indiana to avoid opening its market to competition has worked too well. It has now left

[4] *Ameritech Michigan 271 Order*, at ¶ 6; *id.*, pp. 201-202 (Separate Statement of Chairman Hunt).

itself without evidence to point to that its Indiana market is fully open to competition. Given the risk of remonopolization if long distance authorization is granted before local markets are fully and irreversibly open to competition, the Commission must scrutinize Ameritech Indiana's compliance with the requirements of Section 271 carefully and on the basis of a credible and complete record.

II. UNDER ESTABLISHED PRINCIPLES FOR EVALUATION OF SECTION 271 COMPLIANCE, AMERITECH INDIANA'S CHECKLIST INFORMATIONAL FILING IS PREMATURE AND INADEQUATE TO SUPPORT THE CONCLUSION THAT IT HAS MET THE CHECKLIST

The "informational filing" of Ameritech Indiana does not begin to meet the requirements and standards that the FCC will impose under Section 271. Indeed, Ameritech's submission here would never *receive* serious scrutiny from the FCC, because the essential information on nondiscriminatory access to UNEs including OSS, and adequate performance to support competition, is missing. Moreover, Ameritech's compliance with U.S. Supreme Court, FCC, and IURC decisions governing UNE combinations remains uncertain and untested.

Instead of a complete and fact-based record, Ameritech Indiana has provided high-level assurances that it complies with the competitive checklist. At best, Ameritech Indiana's filing amounts to a promise to meet the checklist at a future date (*e.g.*, following Commission review of its proposed product offerings and prices and testing of its OSS). This is not a "draft FCC application"; it is a "draft of a draft," and an incomplete one at that.

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[5] References to AT&T Affidavits are by Witness name and paragraph number(s).

A. The Extremely General Information Provided By Ameritech On Checklist Compliance Does Not Support The Findings Ameritech Requests And Necessitates That The Commission Conduct Further Fact-Finding.

Starting with its March 19, 2001 order establishing a phased process, and ending with the October 31, 2002 Process Order, the Commission has issued its initial procedural determinations in this matter. In those orders, the Commission adopted a phased, comprehensive approach to investigating Ameritech's compliance with Section 271 of the Act.

The Commission's Process Order provides the standards governing this proceeding:

> [W]e are required to determine, *at a minimum*: (1) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which Ameritech Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to be "binding"; (2) whether, and to what extent, the interconnection agreement(s) or other procedural vehicle(s) by which Ameritech Indiana proposes to demonstrate its compliance with Track A and the 14-point checklist can properly be said to constitute a "concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item"; (3) whether, and to what extent, the "prices and other terms and conditions" of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict Ameritech Indiana's ability to be "currently furnishing" or "presently ready to furnish" "each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality"; (4) whether, and to what extent, the "prices and other terms and conditions" of that proposed interconnection agreement(s) or other procedural vehicle(s) may limit or restrict CLECs from purchasing and offering any or all checklist items in the quantities that they may reasonably demand and at an acceptable level of quality; and (5) whether, and to what extent, the "prices and other terms and conditions" of that proposed

> interconnection agreement(s) or other procedural vehicle(s) may be discriminatory. This brief list of evaluation criteria for interconnection agreements is by no means exhaustive and should not be construed as such.
>
> We find that the five minimum requirements set forth in the previous paragraph should also apply if, and to the extent that, Ameritech Indiana proposes to demonstrate compliance with part or all of the 14-point checklist and/or Track A through a tariff or catalog offering, or the IURC requires that a particular product or service be offered in a tariff or catalog. This brief list of evaluation criteria for tariff or catalog offerings is by no means exhaustive and should not be construed as such.
>
> Regardless of which Interconnection Agreement/Amendment or other procedural vehicle is used to demonstrate compliance with Track A and the checklist, we must emphasize that actual performance, not promises of future performance, is necessary for compliance.[6]

As is discussed below, and in the accompanying affidavits, Ameritech's ication flunks all five of the Commission's standards. It is a fallacy to believe that eritech views as "binding" or "concrete" the interconnection agreements and other edural vehicles (such as the Commission's many pro-competitive communications decisions) that are being offered in support of the § 271 application. n be presumed with confidence that if Ameritech prevails in its appeals of the mission's decisions or in its incessant lobbying for "preemption" in Washington to inate the UNE Platform – the only viable vehicle to service mass market residential small business customers -- that local competition will never develop and that what may exist will vanish. Moreover, the Commission should be wary of any Ameritech nises of future performance, particularly concerning the company's OSS. The npany's agenda is as clear, as it is troubling: get 271 authorization prior to Ameritech

actually fixing its many OSS system deficiencies, cut investment on its systems (since they are designed to help competitors), and litigate any issues in perpetuity.

Moreover, Ameritech's informational filing on its face fails to provide an adequate basis for the § 271 review contemplated by the Commission. Certainly the Commission could not have anticipated that Ameritech's filing would be so incomplete and characterized by so many significant omissions and generalizations. Indeed, Ameritech's brief and affidavits are laced with unsupported, high-level assertions concerning its compliance with its legal obligations, but include little by way of facts demonstrating such compliance. These filings fail to provide the information necessary to sustain findings concerning § 271 compliance.

The Process Order reveals an acute familiarity with the legal requirements that must be satisfied before an applicant can be considered to have complied with the Act's strict requirements. In fact, as the Commission correctly and repeatedly noted in the Process Order the FCC's orders treating 271 applications provide substantial guidance on how the Commission should examine the Draft Application in preparing for its consultative role pursuant to § 271(d)(2)(B).[7] The Act requires it to be able to verify the compliance of the Bell operating company with the requirements of subsection (c) (Requirements For Providing Certain In-Region InterLATA Services). To do so as effectively as possible, the Commission must develop a *comprehensive* factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications. *Ameritech Michigan 271*

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[6] Process Order, pp. 8-9.
[7] 47 U.S.C. § 271(d)(2)(B).

Order, at ¶ 30. It follows that for the Commission to be able to provide the evaluation requested by Ameritech Indiana, it must have a complete and factual record.

Section 271 of course places the burden of proving that it has met the requirements of the Checklist and other elements of the Act *on Ameritech.*[8] As it has in previous applications, the FCC will require Ameritech to demonstrate that it has met this burden with respect to all issues and show that it has met all of the requirements set forth in Section 271.[9] Ameritech is required to "include *all of the factual evidence* on which [it] would have the Commission rely in making its findings" on the merits of a Section 271 application.[10] Importantly, the FCC has indicated that any claim made by a BOC that it has satisfied the Section 271 checklist must be supported by evidence available at the time, and not at some time in the future. In that connection, the FCC has found that "a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof."[11] Significantly, the Process Order clearly recognizes this requirement. (Process Order, pp. 8-9).

Ameritech's informational filing is in fact replete with claims and promises that have yet to be confirmed by either testing or commercial experience. As noted previously, there are products in Indiana for which Ameritech has yet to establish Commission-approved rates, terms and conditions. Thus, all Ameritech can do in regard to these products is "promise" that it will comply with Commission orders.

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[8] 47 U.S.C. § 271(d)(3); *Ameritech Michigan 271 Order*, at ¶ 43.
[9] *Id.*, ¶¶ 43, 158.
[10] Ameritech Michigan 271 Order, at ¶ 49.
[11] Ameritech Michigan 271 Order, at ¶ 55.

Moreover, as noted previously, the statements submitted by Ameritech in support of its draft application to the FCC are designated as "drafts," implying that they are subject to revision at will. As the Commission is no doubt aware, serious questions have been raised as to the validity of information that has been submitted by SBC witnesses to the FCC in true and final affidavit form; there is all the more reason not to place reliance on Ameritech's broad "draft" statements concerning its compliance with § 271.

The review of the checklist is a fact-driven inquiry concerning whether or not Ameritech is discriminating against CLECs. In most instances, each checklist item incorporates a nondiscrimination standard. With respect to the core requirement of nondiscriminatory access to OSS, for example, the FCC has stated:

> We would expect Ameritech to demonstrate, at a minimum, that both individual and combinations of network elements can be ordered, provisioned, and billed in an efficient, accurate, and timely manner, and that its operations support systems supporting such functions are designed to accommodate both current demand and projected demand of competing carriers.[12]

Similarly, as to OSS functions provided to competing carriers that are analogous to the OSS functions that a BOC provides to itself in connection with retail services offerings, the FCC has held:

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[12] *Ameritech Michigan 271 Order*, ¶ 161 (emphasis supplied). The FCC has been quite specific about this requirement:

> It is the access to all of the processes, including those existing legacy systems used by the incumbent LEC to provide access to OSS functions to competing carriers, that is fundamental to the requirement of nondiscriminatory access. [A]lthough the Commission has not required that incumbent LECs follow a prescribed approach in providing access to OSS functions, *we would not deem an incumbent LEC to be providing nondiscriminatory access if limits on the processing of information between the interface and the legacy systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.*

Ameritech Michigan 271 Order, ¶ 135.

> [T]he BOC must provide access to competing carriers that is *equal to the level of access that the BOC provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.* We conclude that equivalent access, as required by the Act and our rules, must be construed broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the BOC's retail operations.[13]

These passages (and there are many others to similar or same effect) reveal the fundamental insufficiency of Ameritech Indiana's showing to date: the requirement is that elements or combinations be provided *at the relevant standard of performance.* It is not that the BOC be providing just "access" to UNEs, but that it is providing *nondiscriminatory* access.

These passages also reveal that the question of whether or not Ameritech is discriminating against a CLEC is a fact-based inquiry demanding empirical evidence, and, where factual questions and/or disputes exist, an evidentiary hearing. Certainly in regard to whether elements and combinations can be ordered, provisioned and billed in an "efficient, timely and accurate" manner is a determination that can be reached only on the basis of facts as to *how* timely and *how* accurately they are provided. Whether the level of access that the BOC provides to CLECs is "equal" to that it provides to itself in terms of "quality, accuracy and timeliness" is similarly a fact-based conclusion – the result of analysis of concrete information – and indeed information *of the kind that is capable of proving or disproving the conclusion in question.*

This Commission in its Process Order recognizes that the inquiry that drives any § 271 investigation is necessarily fact-based, and in particular that discovery must be

[13] *Ameritech Michigan 271 Order*, at ¶ 139.

allowed. (Process Order, p. 13). AT&T appreciates the Commission permitting an opportunity to conduct discovery, and believes this process will allow it to obtain the relevant facts and compile an adequate evidentiary record.

B. Ameritech Indiana's Local Exchange Markets Are Not Fully And Irreversibly Open to Competition.

In Section I of its brief, Ameritech begins by making the bold statement that "[c]ompetition is established and growing in Indiana." (Ameritech Brief, at p. 2.) This carefully worded statement is accurate only under the most generous interpretation. A more reasonable statement is that competition in Indiana is barely emerging. The only conclusion that can be reached concerning the level of competition in Indiana is that Ameritech Indiana's strategy to slow competitive entry has been highly successful.

First, Ameritech's data on competition is grossly inflated and based on a series of flawed estimates. In Michigan, for example, Ameritech filed an almost identical affidavit from Ms. Deborah Heritage to support claims in that state concerning the level of competition. After investigation of Ameritech and CLEC reported data, the Michigan staff concluded that "(t)here is a large discrepancy between what Ameritech reports and what the CLECs report."[14] As explained below, there are systemic problems with the approaches Ameritech has used to *estimate* the level of competition. The Michigan Public Service Commission Staff concurred that the issue is one of estimating versus measuring the actual level of competition: "This [discrepancy] can be attributed to what Ameritech estimates as the number of lines that the CLECs provide over their own facilities and what the CLECs report as actual." The disparities between Ms. Heritage's

"estimates" and "reality" in Michigan were enormous: The MPSC Staff quantified facilities-based competition based upon actual data as less than half that estimated by Ameritech Michigan.

Ameritech's estimate of the level of competition is also entirely inconsistent with this Commission's own data. The Commission's most recent Telephone Report to the Regulatory Flexibility Committee of the Indiana General Assembly ("Reg. Flex. Report"), which was issued in October, provides much more accurate information on the level of competition in Indiana than Ameritech's bloated estimates. As is discussed in more detail below, the Commission's own information illustrates "residential wireline competition at the end of 2001 was at a very low level Indiana." (Reg. Flex. Report, p. 6). This fact is corroborated by the Reg. Flex. Report's finding that CLEC residential lines declined when compared to the prior year's results. *Id.*

1. Ameritech's own data confirms the extremely limited level of competition in Indiana.

Ameritech's claims concerning competition are based on a flawed analysis presented in the draft affidavit of Ms. Heritage. For the reasons discussed below, Ameritech's analysis is seriously overstated. As AT&T Affiant Mr. Turner shows, even Ameritech's materials reveal that facilities-based competition exists at such a nascent level that it cannot provide a "check" on the anticompetitive tendencies of a local exchange service monopoly such as Ameritech Indiana, and it certainly cannot support a conclusion that Indiana has been "irreversibly opened" to competition. Thus, even Ameritech's data cannot hide the regrettable reality that there is no significant

[14] Michigan Public Service Commission, Staff Report, Results of 2nd Competitive Market Conditions Survey, May 23, 2001, Case No. U-12320, p. 1 (attached to Mr. Turner's Affidavit as Exhibit SET-2).

competition in Ameritech Indiana's service territory, and the competition that does exist is struggling.

2. Ameritech's Access Line Count Rests On A Flawed Estimate

As Mr. Turner points out in his Affidavit, when one reads through the statistics in the Heritage draft affidavit, it would appear as if Ameritech is facing certain imminent market doom, particularly for business access lines. However, it is helpful to understand that as much as **86.2 percent** of the supposed access line losses alleged by Ameritech are mere estimates based largely on inappropriately converting *all* interconnection trunks into access line equivalents without any regard for how the trunks are used.[15] Specifically, Ms. Heritage states that Indiana CLECs have acquired as many as 404,662 facilities-based[16] access lines.[17] However, upon review of the Heritage affidavit describing the development of these figures, only 55,781 access lines (those that are UNE-P Combinations) are directly counted in the total. The remaining 348,881 lines are estimated. She reaches this estimate by multiplying the 126,866 interconnection trunks that Ameritech has provisioned in Indiana by a factor of 2.75 lines per trunk. (Turner Affidavit at ¶¶22–23.)

The problem with this approach is that it is not a reasonable method of estimating the number of lines served by competitors. While estimation in and of itself would not be inappropriate, and might even be necessary given the nature of the exercise, Ms. Heritage and Ameritech use faulty assumptions regarding interconnection trunks that dramatically skew their estimates. *First and foremost*, Ameritech did not make any adjustment for the large quantity of ISP traffic that CLECs terminate. The detailed data Ameritech has

[15] Heritage Draft Affidavit, pp. 9-10.
[16] This number includes CLECs serving lines via UNEs and entirely through their own facilities.

provided in the 271 investigations in the other four Ameritech states shows that much of the interconnection traffic for CLECs is related to ISP traffic. Due to the nature of this traffic, the CLEC will require closer to one – not 2.75 as the Heritage Affidavit espouses – trunk per each ISP line equivalent. (Turner, at ¶ 24.) The Department of Justice agrees, commenting in the Texas Section 271 application that a 1:1 ratio between trunks and estimated lines was a "more reasonable multiplier."[18] If this adjustment is not made, the CLEC could have a situation where it has ISP lines available to terminate calls, but has insufficient trunk capacity to complete the call from Ameritech. In short, for these trunks, the 2.75 ratio used in the Heritage affidavit significantly overstates the number of access lines, and given the large percentage of ISP traffic terminating to CLECs today the vast majority of trunks fall into this category. *(Id.)*

Finally, Ameritech lists 125 facilities-based CLECs as evidence of the "vibrant" competitive market in Indiana. Ultimately one of the most telling indications of the lack of competition in Indiana is the fact that of the competitors listed by Ameritech, eighteen are bankrupt or extremely near bankruptcy, or simply no longer exist[19] and most have stock prices approaching zero.[20] Mr. Turner provides a detailed analysis of the dire state of the CLEC industry in his testimony. (Turner Affidavit, ¶¶34-46.) These failures are

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[17] Heritage Draft Affidavit, at p. 10. *See* "Interconnection Trunks 2.75:1 Ratio + UNE-P."

[18] *See* Comments of the United States Department of Justice at fn. 15. *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-4 (FCC filed Feb. 14, 2000).

[19] *See* Turner Affidavit at ¶ 35, noting 360Networks USA, Adelphi Business Solutions, Adelphia Business Solutions (Hyperion), Birch Telecom, Global Crossing, JATO Operating Two, McLeodUSA Telecommunications, Metromedia Fiber Network Services, MCI WorldCom, NETtel Communications, Pathnet, Supra Telecommunications, Teligent, Vectris Telecom, Vitts Networks, Williams Local Network, WinStar and XO Communications.

[20] *See* Turner Affidavit ¶35 (noting, e.g., Choice One Communications ($0.39), DSL.net ($0.61), McLeodUSA ($0.00), Talk America Holdings Inc. ($6.88), WorldCom ($0.26) and Z-Tel ($0.99)).

not unique to Indiana, but they are accentuated in Indiana because so many of the basic ingredients to local competition remain unavailable in any economic or reliable manner.

In summary, Ameritech's data does not support a conclusion that competition is flourishing in Indiana, much less that Ameritech Indiana's market is irreversibly open to competition. The best evidence of whether there will ever be competition in the future is whether competition can be created today. On this score, regrettably, the data speaks for itself.

C. Ameritech Has Failed to Establish the Basic Conditions to Support Competition.

The state of competition in Indiana is not surprising based upon how far Ameritech Indiana has fallen behind its counterparts in other states in establishing the prerequisites to competition. Until very recently, Ameritech ignored Commission orders and flatly refused to provide the unbundled network element platform ("UNE-P") at reasonable rates, terms and conditions. This kept competition at a standstill, since UNE-P is the one entry mechanism that has generated mass-market residential competition to date. Now that UNE-based competition is beginning, in particular in the key residential sector, Ameritech has injected uncertainty into its sustainability by appealing every single pertinent Commission decision and by incessantly lobbying the FCC to preempt the states from allowing UNE-P competition.

When the FCC defined new product offerings that allow CLECs to compete against Ameritech in the high-speed DSL market (e.g., line sharing and line splitting), Ameritech again delayed in coming forward with terms, conditions and pricing for Indiana carriers to purchase these new offerings. The Commission and the CLECs are, in

fact, still attempting to determine Ameritech's rates, terms and conditions for providing line splitting in Cause No. 40611-S1 (Phase 2).

There are numerous other significant product definition and pricing issues that have yet to be resolved in Indiana. In this § 271 case, the Commission is also reviewing a host of OSS, product definition and performance measure issues. Finally, the Commission, BearingPoint, and various parties are fully engaged today in reviewing what OSS and performance measures are to be tested and audited in the Indiana third-party test.

There is only one party to blame for this backlog of regulatory issues on essential competitive topics: Ameritech. Ameritech Indiana's delaying tactics, not to mention its appeals of the many pro-competitive orders of this Commission, have paralyzed local competition. The fact is that, by refusing to properly implement the Act or key IURC orders on a timely basis, Ameritech was able to forestall entry during the period in which capital was readily available. Moreover, by preventing companies from establishing business plans that were compatible with large-scale entry, Ameritech preempted the development of the commercial volumes needed to "test" Ameritech's operational readiness to support network elements. In an unfortunate (yet strategic) "Catch 22," by *denying* entrants nondiscriminatory access to the network for so long, Ameritech made it harder to *document* discrimination because actual experience is lacking.

Permitting Ameritech to demonstrate Checklist Compliance through paper claims is exactly the wrong regulatory reaction to its dilatory behavior. From the very beginning, Ameritech Indiana has understood what entrants would require if they were to try and offer local services broadly in competition with it: access to network element

combinations, in particular the Unbundled Network Element Platform, or UNE-P. While other entry strategies are also important, this was (and is) the only strategy that has the capability of sustaining competition for the vast majority of residential and small business customers that desire conventional phone services. The level of local competition in Indiana can be directly tied to whether this strategy is practically, commercially available, a claim that can only be confirmed through substantial actual experience.

Even in the wake of Commission orders on such issues, the uncertainty concerning whether and how Ameritech will offer the products and elements continues. While Ameritech points (albeit mostly in other states) to a growing level of local competition, that competition is largely a product of UNE-P, yet Ameritech and its parent company SBC have launched a withering attack on UNE-P before the FCC and in various political arenas. If Ameritech has its way, UNE-P would be eliminated and with it the one mechanism that has been proven capable of supporting mass market local competition. Ameritech's historical pattern of feigned compliance is the reason why so little competition has developed in Indiana, and Ameritech's aim is to keep it that way. The Commission should make clear that it will judge Ameritech's compliance with market-opening requirements only through tangible results, and that those conditions must be sustained going forward.

III. CHECKLIST ITEM REVIEW

As indicated above, AT&T in these comments and in the accompanying affidavits focuses on core areas that warrant closer, fact-driven investigation by the Commission.

A. Checklist Item 1: Interconnection

CLECs use collocation as one of the primary methods of interconnection. The 1996 Act and subsequent FCC orders and regulations set forth the collocation requirements that Ameritech Indiana must satisfy before it can claim to have met its checklist obligations. Section 271(c)(2)(B)(i) and (ii) of the Act, respectively, require ILECs to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)," and "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(2) of the Act provides that Ameritech Indiana must make available:

> [I]nterconnection with the local exchange carrier's network ... at any technically feasible point within the carrier's network; that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Thus, Section 251(c)(2) of the Act compels Ameritech Indiana to provide for collocation (or more appropriately central office space) to achieve interconnection at any technically feasible point within Ameritech's network at the same level of quality that it provides central office space to itself. Additionally, 47 U.S.C. § 251(c)(3) requires that Ameritech Indiana provide CLECs access to UNEs. This access must be provided in a "nondiscriminatory" manner at "any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Collocation is critical for CLECs to have the ability to access UNEs. (Noorani, at pp. 16-18.)

The FCC has recognized the importance of collocation to interconnection and UNE access. The FCC stated in its Texas 271 Order,[21] "[t]he provision of collocation is

[21] *See* Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long*

an essential prerequisite to demonstrating compliance with checklist item (i) of the competitive checklist." The FCC stated further that to allow compliance with item (i), "a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are '*just, reasonable, and nondiscriminatory*' in accordance with section 251(c)(6) and our implementing rules."[22] (Noorani, at pp. 17-18.)

Regarding interconnection, as Mr. Noorani explains, Ameritech has adopted policies relating to the Connecting Facility Arrangement that do not comply with the Act and the requirements of FCC orders. (Noorani, at pp. 17-25.) Moreover, Mr. Noorani discusses certain network architecture issues before the Commission that raise fundamental concerns about the interconnection of CLEC and ILEC networks (e.g., the number and location of "points of interconnection" or "POIs" and tandem exhaust) and how, or even whether, the parties will compensate each other for the transport and termination of traffic originating on the other party's network. An overview of Ameritech Indiana's network architecture statements reveals that in many areas Ameritech's interconnection policies are designed to maximize AT&T's costs, minimize its network efficiencies and prevent AT&T from providing legitimate competitive services, while at the same time requiring it to provide Ameritech with services or support that AT&T is not otherwise required to provide. (Noorani, at pp. 3-14.)

B. CHECKLIST ITEM 2: ACCESS TO NETWORK ELEMENTS

Including, and To Be Discussed Along With

Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, 15 FCC Rcd 18354, ¶ 64 ("*Texas 271 Order*").

CHECKLIST ITEM 4: UNBUNDLED LOOPS

CHECKLIST ITEM 5: LOCAL TRANSPORT

and

CHECKLIST ITEM 6: LOCAL SWITCHING

1. Ameritech Has Not Committed To Making Unbundled Network Elements Fully and Freely Available to CLECs.

As noted above, an issue of fundamental importance to the development of broad-based, residential competition is whether and on what basis Ameritech Indiana will make combinations of Unbundled Network Elements, specifically the "UNE-Platform" or "UNE-P," available to CLECs. Ameritech has employed a series of stratagems designed to avoid making UNE-P fully and freely available in compliance with this Commission's and the FCC's requirements. As the Commission is aware, Ameritech long relied upon the decisions of the Eighth Circuit Court of Appeals in the *Iowa Utilities Board* cases[23] to insist that it is not required to provide "new" combinations of network elements, and its submissions here rest on that premise.

By all rights Ameritech's position in this respect was completely undermined by the U.S. Supreme Court decision in the *Verizon* case, supra. In that decision the Supreme Court reversed the Eight Circuit and reinstated the FCC's rules on "additional combinations." That should be the end of the matter, and the limitations that Ameritech Indiana has sought to impose on its UNE combinations offerings should be fully and unequivocally rejected.

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[22] *Texas 271 Order*, at ¶ 64 (emphasis added).

[23] *Iowa Utilities Board v. FCC*, 120 F. 3d 753 (1997), aff'd in part and rev'd in part, 525 U.S. 366 (1999), on remand, 219 F. 3d 744 (2000).

There are other respects, beyond UNE-P, in which Ameritech Indiana does not satisfy Checklist Items 2 or 4 of Section 271 in that it does not provide to CLECs "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[24] Specifically, as discussed in Ms. Fettig's affidavit, Ameritech Indiana refuses to make unbundled loops available to AT&T that are provisioned using Next Generation Digital Loop Carrier (NGDLC) systems. (Fettig, at pp. 5-13.) Ameritech calls this new provisioning practice its Project Pronto network architecture. Ameritech takes the position that it should be allowed to retain any new deployment of the unbundled loops constituting its Project Pronto architecture for its sole use.

The FCC has already decided that CLECs will be disadvantaged without access to unbundled loops and, consequently, CLECs will be impaired without access to this type of Ameritech loop infrastructure. The FCC rules designate that Unbundled Network Elements are technology independent.[25] This means that Ameritech cannot avoid

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[24] 47 U.S.C. § 271 (c) (2) (B) (ii).

[25] First Report and Order, *Implementation of the Local Competition Provisions in the* Telecommunications *Act of 1996*, CC Docket No. 96-98 (released August 8, 1996) ("*Local Competition Order*"), at ¶292. ("Under section 251(c)(3) [of the Act], incumbent LECs must provide access to 'unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide' a telecommunications service . . . this language bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend. For example, incumbent LECs may not restrict the types of telecommunications services requesting carriers may offer through unbundled elements, nor may they restrict requesting carriers from combining elements with any technically compatible equipment the requesting carriers own. We also conclude that section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the functionalities of a particular element, so that requesting carriers can provide any telecommunications services that can be offered by means of the element. We believe this interpretation provides new entrants with the requisite ability to use unbundled elements flexibly to respond to market forces, and thus is consistent with the pro-competitive goals of the 1996 Act.") *See also, Local Competition Order*, ¶ 264 (" Section 251(c)(3) does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements."); *UNE Remand Order* at ¶ 326, quoting *AT&T v. Iowa Utils. Bd., supra,* 119 S.Ct. at 731 ("facility or equipment used in the provision of a telecommunications service" (§ 153 of the Act) as the US Supreme Court has interpreted that provision of the Act, to include "'features, functions and capabilities that are provided by means of such facility or equipment.")

provisioning UNE loops to CLECs over its NGDLC loop network. In her affidavit, Ms. Fettig shows why this request is no different from requesting UNE loops over copper or Universal Digital Loop Carrier (UDLC) systems. The Commission should find that Ameritech has not met its Section 271 obligations if Ameritech continues to refuse to provide CLECs access to unbundled loops provisioned using the NGDLC loop network.

Ameritech Indiana also has failed to meet its obligation to provide UNE-P with line splitting as a combination of network elements. Ameritech Indiana continues to support the notion that UNE-P with line splitting becomes a new combination, even when the customer currently subscribes to Ameritech for residential voice and data services. Ms. Fettig discusses why Ameritech fails to meet its obligations for line splitting over UNE-P and for combinations in general. (Fettig, at pp. 13-27.)

Moreover, under the UNE Remand Order, SBC Ameritech must either provide AT&T access to SBC Ameritech's AIN features, including Privacy Manager, or provide non-discriminatory access to its SCE in order for AT&T to design, create, test, and deploy its own Privacy Manager feature. Today, SBC Ameritech refuses to do either on a non-discriminatory basis. Instead, SBC Ameritech effectively uses Privacy Manager as a marketing (i.e., win back) tool to AT&T's great competitive disadvantage. SBC Ameritech's conduct evidences its failure to satisfy Checklist Items (ii) and (vi) of Section 271. (Fettig, at pp. 27-35.)

CHECKLIST ITEM 13: RECIPROCAL COMPENSATION

Section 252(i) of the Act requires Ameritech to make available to CLECs reciprocal compensation arrangements contained in already-approved interconnection agreements. The FCC has implemented rules requiring that:

> An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.[26]

The FCC's rules and Section 252(i) exist to prevent discrimination. "The practical effect of §252(i) is to prohibit incumbent carriers from exercising a preference for one carrier over another." *GTE North Inc. v. McCarty,* 978 F. Supp. 827, 831 (N.D. Ind. 1997).

The FCC's ISP Order[27] placed one limitation upon Section 252(i) adoption of reciprocal compensation arrangements: CLECs are not allowed to exercise their rights under Section 252(i) to opt into "an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic."[28] No corresponding restriction upon the right of CLECs to opt into interconnection agreements entered *after* the FCC ISP Order went into effect. Thus, no FCC-imposed restriction prevents CLECs from opting into the reciprocal compensation arrangements of interconnection agreements entered

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[26] 47 C.F.R. §51.809(a)(1996). The United States Supreme Court has affirmed the legality of this rule's "pick and choose" requirements. *See,* AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366, 395, 119 S. Ct. 721, 738 (1999).

[27] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic,* FCC Docket Nos. 96-98 and 99-68 (Order on Remand and Report and Order, April 27, 2002) (referred to herein as "FCC ISP Order"). It should be noted that the legal basis for the FCC's broad preemption of state authority over ISP-bound traffic – Section 251(g) of the Act -- has been held unlawful by a federal appeals court and remanded to the FCC. *See, WorldCom, Inc. v. FCC,* 288 F.3d 429 (D.C. Cir. 2002). The remanded case is still pending. Because the FCC ISP Order was not vacated, however, it still is in effect. These comments should not be construed as AT&T's agreement that the FCC has the legal authority to preempt the states' ability to regulate ISP-bound calling in order to reduce, or eliminate, reciprocal compensation for such calling.

after the FCC's preemption order. The FCC has ruled that, where it imposes no restriction upon competition, there is to be no presumption that one is intended.[29]

As the Commission is aware, Ameritech consistently ignores federal law. It has repeatedly opposed CLEC efforts to opt into the local reciprocal compensation provisions of interconnection agreements that became effect after the effective date of the FCC ISP Order.[30]

Ameritech contends that the FCC has ruled that reciprocal compensation for ISP-bound traffic is not a checklist item, and is not an issue in the context of Section 271 applications. (Alexander Aff., ¶105). The FCC did not (nor could it, given the requirements of federal law) rule that reciprocal compensation arrangements for local traffic are somehow now excluded from the Section 271 requirements. Ameritech's refusal here in Indiana to allow adoption of reciprocal compensation provisions, however, involves not only calling to ISPs, but also local reciprocal compensation arrangements. Thus, Ameritech's actions regarding local reciprocal compensation arrangements are, indeed, a proper focus of this case.

Ameritech's position only exists to further its anti-competitive agenda. Its behavior implies a position that the FCC imposed a blanket prohibition for all time for CLECs to opt into the reciprocal compensation arrangements of other CLECs.

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[28] FCC ISP Order, ¶82.

[29] *See, In the Matter of SBC Communications, Inc., Apparent Liability for Forfeiture,* File No. EB-01-IH-0030, NAL/Acct. No. 200232080004, FRN 0004-3051-24,0004-3335-71,0005-1937-01, Forfeiture Order at ¶14 and fn. 44 (FCC, October 8, 2002).

[30] *See, e.g., Request for Adoption by Grande Communications Networks, Inc. of the Interconnection Agreement between Ameritech Indiana and AT&T Pursuant to Section 252(i) of the Telecommunications Act of 1996,* Cause No. 41268-INT 92 (Order, March 6, 2002); *Request for Adoption by ACME Communications, Inc. of the Interconnection Agreement between Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana and TCG Indianapolis Pursuant to Section 251(i)[sic] of the Telecommunications Act of 1996* (Order, March 6, 2002).

Ameritech therefore acts in contravention of federal law standards for reciprocal compensation. Thus, Ameritech fails to offer reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Act, as mandated by the FCC and the courts. Therefore, Ameritech does not meet Checklist item 13, and the Commission should recommend that the FCC deny its Section 271 application.

The issues identified above, among others discussed by AT&T's witnesses, demonstrate that Ameritech Indiana has failed to meet its obligations under 47 U.S.C. 271(c) (2) (B)(ii), (iv), (v) and (vi). As indicated above, further proceedings will be needed to investigate and resolve these issues.

3. Ameritech Is Not Offering Nondiscriminatory Access To Its OSS.

Ameritech Indiana's Operational Support System or OSS is a separate UNE, as defined by the FCC in the rules it promulgated pursuant to the Telecommunications Act of 1996. *See, e.g.*, Rule 319(g)) (47 C.F.R. § 51.319(g)). Because it is a UNE, Ameritech Indiana is obligated to provide CLECs nondiscriminatory access to its OSS as part of a showing of its compliance with the § 271 "Checklist", particularly item 2. See 47 U.S.C. § 271(c)(2)(B)(ii). In addition, Ameritech's OSS implicates almost every other checklist item. For example, Ameritech's OSS is necessarily tied to the question of whether Ameritech is providing CLECs nondiscriminatory interconnection (e.g., collocation) (Checklist Item 1) and access to all UNEs (Checklist Items 2, 4, 5 and 6), 911 and E911 (Checklist Item 7), directory white page listings (Checklist Item 8), call routing databases (Checklist Item 10), number portability (Checklist Item 11), and resale services (Checklist Item 14).

Because Ameritech's OSS is the means by which CLECs order collocation, UNEs, resale services, etc., no conclusions can be made about Ameritech's compliance with any of these checklist items until a thorough investigation of Ameritech's OSS is complete. The FCC itself has found that the duty to provide nondiscriminatory OSS is embodied in almost every checklist item.[31]

Ameritech Indiana's affiants have provided this Commission with draft statements that supply only generalities concerning its OSS capabilities. They have failed, however, to provide specific, factual information on which the Commission could make judgments on whether Ameritech Indiana is actually meeting its obligation to provide CLECs nondiscriminatory access to its OSS.[32] Instead of accepting this insufficient and transparent presentation, the Commission should follow the processes it has put in place to evaluate Ameritech's OSS (e.g., third-party testing, performance reporting and evaluation of commercial experience) through to conclusion. Third-party testing is still in progress and Ameritech Indiana's performance measures have yet to be audited; this process should be allowed to be completed. In all, there is much that needs to occur and many facts that must be teased out before the Commission can make any definitive conclusions concerning Ameritech's OSS.

AT&T has supplied specific and factual information about Ameritech's OSS. *See* Willard/Webber Aff., ¶¶ 53-116. AT&T's experience with Ameritech's OSS thus far indicates that it has failed to develop its OSS to a level that provides the appropriate

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[31] *See In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut,* CC Docket No. 01-100, Memorandum Opinion and Order (rel. July 20, 2001) ("FCC Connecticut 271 Order"), Appendix D, at pp. 11-13, n.68.

functionality and true nondiscriminatory access such that new entrant carriers will be able to compete with Ameritech Indiana. AT&T's principal affiants on this subject are Walter Willard and Rebecca Webber, who have front-line OSS responsibility in AT&T's consumer and business services organizations. *See* Willard/Webber Aff., ¶¶1-5. In their affidavit, Mr. Willard and Ms. Webber describe a surprising number of critical, systematic flaws in Ameritech Indiana's OSS. After failing for years to update its OSS and thus allowing them to lag behind those of the other RBOCs, within the past 20 months SBC/Ameritech has implemented two major "upgrades" to its OSS. *Id.*, ¶ 27-52. These OSS releases – the first from LSOG Version 1.7 to LSOG 4 and the second from LSOG 4 to LSOG 5 – have been marked by numerous violations of Ameritech Change Management Process and have not delivered promised levels of functionality or performance. *Id.* Indeed, each of Ameritech's LSOG releases has been implemented in a rushed and sloppy manner, with critical documentation continuing to change months after the release date. *Id.*, ¶¶ 30, 38. The result has been a severely flawed system that CLECs are still struggling with today. As Ameritech "completed" its upgrade of its OSS to LSOG 5 this past April, AT&T's concerns have, if anything, only increased as Ameritech has prepared to move to LSOG 6. The evidence suggests that Ameritech's implementation of LSOG 5 was as flawed as its implementation LSOG 4. Willard/Webber Aff., ¶¶ 41-52.

AT&T's experience *using* the LSOG 4 interfaces has revealed a variety of serious flaws in the OSS systems, a preponderance of highly manual processes that Ameritech uses in conjunction with those systems, and a support environment Ameritech that does

[32] Indeed, unlike affidavits Ameritech has filed in other states, its affiants in Indiana do not even expressly claim that its OSS complies with Checklist Item ii. Ameritech' witnesses appear to concede that the

not allow CLECs to test and implement OSS releases in a timely, efficient or accurate manner. The Willard/Webber affidavit describes these problems in substantial detail. The following is a summary of the issues identified:

- Ameritech's Change Management Process (CMP) is flawed and fails to produce an orderly and commercially usable OSS releases. Ameritech's releases of LSOG 4 and LSOG 5 have been tainted by scheduling delays and a failure to comply with CMP documentation procedures. Willard/Webber Aff., ¶¶ 18-52.

- Ameritech's recent OSS performance has been highly erratic, with numerous unannounced "coding" changes resulting in tens of thousands of orders being rejected. Willard/Webber Aff., ¶¶ 53-116.

- Ameritech's Joint Testing Environment is flawed in that it fails to mirror actual production experience. Willard/Webber Aff., ¶¶ 49.

- Ameritech's processes for CLEC to establish connectivity and complete interface development are poorly documented and executed by Ameritech personnel. Willard/Webber Aff., ¶¶ 33 & n. 21.

- Ameritech's Graphical User Interfaces (GUIs) have exhibited slow and inconsistent response performance. Since the release of LSOG 5, Ameritech has been required to modify the architecture of the LSOG 5 GUIs on several occasions. Willard/Webber Aff., ¶ 51.

- Ameritech's OSS continues to exhibit flawed performance in the delivery of timely and accurate notifiers. The most problematic issue with Ameritech's notifiers is the well-documented problem with 836 records or Line Loss Notifiers. These problems have recurred in recent weeks, despite Ameritech's repeated assurance that the problems had been solved. Willard/Webber Aff., ¶¶97-116.

AT&T's experience and findings regarding Ameritech's OSS have been confirmed over the course of the BearingPoint third-party testing conducted under the auspices of this Commission and other commissions in the Ameritech region. While the BearingPoint test results should be examined in another phase of this proceeding, the

findings of the BearingPoint test must be delivered before such a claim can be advanced.

Commission should be aware that the test has discovered important defects in Ameritech's OSS capabilities:

- Ameritech's OSS improperly updates Customer Service Records (also known as CSRs).[33]
- Ameritech's OSS give inaccurate and untimely responses during pre-order and order volume testing.[34]
- Ameritech's OSS incorrectly update directory assistance databases.[35]
- Ameritech's OSS give inconsistent and inaccurate maintenance trouble reports.[36]
- Ameritech's OSS fail to ensure timely and accurate service order completion notifications.[37]
- Ameritech's OSS have endemic problem relating to the substantiation of its performance measurement and remedy plan payment calculations.[38]

Moreover, BearingPoint continues to make such findings. It has issued several important Exception Reports in the past weeks, which identify new areas of concern. The important insight for present purposes is that the defects BearingPoint has identified in Ameritech's OSS are not isolated, minor problems. Nearly every portion of Ameritech's OSS has been found to be deficient. Until these and other issues are addressed, the Global Exit Criteria the Indiana Master Test Plan as designed will not be satisfied, and the test cannot be considered complete.

Given the totality of the evidence in the present record, it is premature to reach a determination that Ameritech Indiana provides nondiscriminatory access to its OSS and, derivatively, access to the UNEs CLECs require to provide viable local exchange

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[33] Each of these findings have been made in interim reports filed in Illinois and Michigan, and are derived from Exception Reports and Observation Reports prepared during the course of the BearingPoint test. The most recent BearingPoint interim report (issued for Michigan) can be found at the following web address: http://www.osstesting.com/Documents/MI%20Docs/OSS%20Evaluation%20Project%20Report%20103002.pdf. (Hereinafter, the "October 30, 2002 Michigan BearingPoint Interim Report"). The "not satisified" finding with regard to CSR updates can be found at page 934 of that report.

[34] October 30, 2002 Michigan BearingPoint Interim Report, pp. 821-911.

[35] October 30, 2002 Michigan BearingPoint Interim Report, p. 918.

[36] October 30, 2002 Michigan BearingPoint Interim Report, p. 983.

[37] October 30, 2002 Michigan BearingPoint Interim Report, pp. 795-96.

[38] October 30, 2002 Michigan BearingPoint Interim Report, pp. 225-323.

telecommunications services. Indeed, the only conclusion that may be drawn from the record as it exists now is that Ameritech's OSS fail to deliver the functionality and performance necessary to allow CLECs to compete effectively against Ameritech. Before attempting to reach any conclusions concerning Ameritech's OSS, the Commission should await the results of BearingPoint third-party testing and CLEC commercial experience on Ameritech's operating systems, including LSOG 5. The Commission must wait for the salient facts to emerge regarding Ameritech Indiana's OSS. Then, and only then, the Commission should conduct a full hearing on OSS issues in order to fully develop the facts concerning Ameritech's OSS. Far too much is at stake to conduct anything less than full and complete investigation concerning this most essential checklist item.

4. The Need for Performance Measurements Due to Ameritech's Wholesale Service Quality Problems.

As part of this proceeding, the Commission hosted collaboratives focusing on many competitively crucial topics, such as what improvements should be made to Ameritech's OSS so that competitive local exchange carriers ("CLECs") can obtain wholesale services in a nondiscriminatory fashion and therefore compete. The Commission's OSS collaboratives also addressed Ameritech's adoption of performance measurements and a remedy plan. The collaboratives – many of which were hosted by the Commission -- were held during 2000.[39] The outcome of these collaboratives was agreement on performance measures and on the parameters of BearingPoint's test of Ameritech's OSS.

[39] The other four Ameritech state commissions (Ohio, Michigan, Wisconsin, and Illinois) conducted collaborative workshops in conjunction with Indiana.

AT&T affiant Karen W. Moore, who participated in all performance measurements collaboratives in Indiana and the other states in which Ameritech operates, presents a detailed discussion of the development of performance measurements in Indiana, and also the myriad problems faced by CLECs resulting from Ameritech's poor wholesale service quality. As detailed by Ms. Moore, BearingPoint's test of Ameritech's OSS, along with AT&T's experiences, shows that Ameritech continues to provide chronically poor wholesale service.

As discussed in greater detail by Ms. Moore, BearingPoint's test of Ameritech has revealed a whole host of defects, some of which Ameritech has been told to fix for over a year (e.g., Exception Reports 19 and 20). Today, over a year after the Indiana OSS test began, a number of exception reports and observations remain open, literally extending to the most crucial elements of Ameritech's OSS:

1. Ameritech's systems do not retain source data in its original form to allow CLECs to verify the accuracy of the Company's reported performance results.[40] This, in turn, makes it impossible to audit data, including any effort to trace errors in the reported results.
2. Ameritech also has inadequate procedures governing performance measurement calculation and reporting.[41] Ameritech is continually restating performance measurement results, which means CLECs and regulators cannot rely upon Ameritech's reported results.

[40] Moore Aff., ¶¶14-16.
[41] Moore Aff., ¶¶17-19.

3. Ameritech's change management process does not provide for monitoring and communicating changes made to upstream data files that impact metrics.[42]

4. Ameritech's chronic inability to retain data caused a number of exceptions to open. Although these exceptions recently closed, they did not do so because Ameritech's systems work adequately, because substantially the same problems are still being retested as part of Exception No. 20.[43]

5. For a six-month period, Ameritech consistently failed to update its business rules.[44]

6. In addition to its many system defects, Ameritech's reported results are completely unverifiable. For months, BearingPoint has been unable to replicate Ameritech's reported performance results.[45]

Indeed, based upon these experiences, it is obvious that Ameritech's OSS is so faulty that the company cannot gather, retain, report, or correct errors (so-called "restatements") of its performance results. In short, Ameritech's self-reported wholesale performance to CLECs is grossly inaccurate, and cannot be relied upon. This, in turn, means Ameritech cannot at this time be said with any confidence to comply with **any** Section 271 checklist item.

[42] See BP Exception Report 41, attached as part of AT&T Exhibit KWM-01.
[43] Moore Aff., ¶¶21-25.
[44] Moore Aff., ¶26.
[45] Moore Aff., ¶27.

IV. PUBLIC INTEREST ISSUES

A. THE COMMISSION HAS ALREADY REJECTED AMERITECH'S PROPOSED REMEDY PLAN AND ADOPTED IN THIS PROCEEDING A SECTION 271 REMEDY PLAN

The FCC has ruled in prior Section 271 proceedings that the states should establish their own remedy plans for the Bell Operating Companies to assist in showing the application meets the public interest. For example, the FCC stated in its decision granting Section 271 authorization to BellSouth in Georgia and Louisiana:

> We have not mandated any particular penalty structure, and we recognize different structures can be equally effective. We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We note that both the Georgia and Louisiana Commissions anticipate modifications to BellSouth's SQM from their respective pending six-month reviews. We anticipate that these state Commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace.[46]

Thus, the Commission has the same right as all other states to adopt a remedy plan for Ameritech that is tailored to Indiana's unique circumstances.

Ameritech's September 26, 2002 draft submission includes a proposed performance assurance plan. (Ehr Aff., ¶244). As is discussed in more detail in the accompanying affidavit of Karen W. Moore, after conducting over two years of collaboratives and entertaining multiple rounds of comments, on October 16, 2002 the Commission adopted an Indiana-specific Section 271 Ameritech Performance Assurance

[46] Joint Application by BellSouth Corporation, BellSouth Communications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA services in Georgia and Louisiana, CC Docket 02-35, released May 15, 2002, ¶294. (Footnotes omitted).

Plan. (Moore Aff. ¶¶6-7). Because of the Commission's adoption of a Section 271 remedy plan for Ameritech, Ameritech's prior proposal is now moot.

It should be noted that Ameritech has appealed the Commission's remedy plan order.[47] Unfortunately, this is nothing more than the latest example of Ameritech literally appealing the entire basis of its pending Section 271 application.

AT&T recommends that the Commission report to the FCC that its October 16, 2002 remedy plan is the only remedy plan that meets the public interest for purposes of Section 271. Such a recommendation will incent Ameritech to comply with the Commission's October 16, 2002 decision rather than continuing to clog the courts with meritless appeals.

B. THE COMMISSION SHOULD, AT A MINIMUM, ESTABLISH THAT EACH OF AMERITECH INDIANA'S WHOLESALE OBLIGATIONS IS A CONTINUING OBLIGATION THAT IT CANNOT ELIMINATE OR REDUCE WITHOUT SPECIFIC APPROVAL BY THE COMMISSION, AND IT SHOULD CONSIDER STRUCTURAL SEPARATION OF AMERITECH'S WHOLESALE AND RETAIL OPERATIONS PRIOR TO A FAVORABLE SECTION 271 RECOMMENDATION.

I. Ameritech's Entry into the Long Distance Market is Not in the Public Interest

One of the key purposes of this proceeding is the very fundamental question of whether Ameritech Indiana's entry to the interLATA market is in the public interest at this time. Ameritech Indiana prefaces its application and builds its argument from the bold and inaccurate claim:

> Ameritech Indiana's commitment to competition goes beyond the date of the application, and is designed to last long after interLATA relief is granted.[48]

[47] *See,* Notice of Appeal from Administrative Agency, Cause No. 41657 (November 15, 2002).

As is discussed in the Affidavit of Mr. Joseph Gillan, as well as in detail elsewhere in these comments, standing in stark contrast to this assertion is the full panoply of SBC initiatives designed to gut its unbundling obligations, seek federal preemption of State unbundling rules, while blaming every conceivable misfortune on competitors that rely on network elements leased from SBC to provide service. (Gillan Aff., ¶5).

Conditions today are far different than what was anticipated when the Act was passed. Deteriorating conditions in the competitive telecommunications industry -- coupled with the SBC's unrelenting attacks on its obligation to open its network – calls for a fundamental reexamination of whether granting additional 271 applications is in the public interest. This Commission has before it a structural solution in Cause No. 41988 that would largely silence SBC's continued opposition to unbundling by placing SBC squarely in the shoes of a CLEC. Such an approach would permanently alter SBC's incentives such that its network operations would embrace those wholesale solutions that work (such as UNE-P), rather than seeking their elimination.[49]

It is not AT&T's intention here to reargue the record in Cause No. 41988. In that proceeding, however, Mr. Gillan warned that SBC opposition to local competition would continue to grow -- and the resources available to the competitive sector to respond would continue to wither -- unless the Commission took corrective action. The accuracy of that prediction becomes clearer by the day. SBC no longer even *pretends* that it is

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[48] Brief In Support Of Application By SBC Communications, Inc., Ameritech Indiana, and Ameritech Long Distance for Provision of In-Region, InterLATA Services in Indiana, page iii.

[49] As recently as December 2001, SBC reported only 6,801 UNE-P lines in Indiana (Source: SBC Form 477 Filing with the FCC). Eight short months later (August 2002), SBC reported 61,026 UNE-P lines (Source: SBC Ex Parte, Docket CC 01-338, October 30, 2002), a more than 10-fold increase.

interested in encouraging non-discriminatory behavior by its network technicians, choosing instead to embark on a public relations campaign that portrays such competitors as the number one threat to these technicians' job security.[50] (Gillan Aff., ¶7).

Premature § 271 authority, without ironclad measures to ensure that consumer choice can continue, could result in remonopolization. Indeed, in states where 271 relief has been prematurely granted, SBC and Verizon have gained, in less than *two years*, a market share substantially greater than that which took MCI and Sprint *together* more than *two decades* to achieve.[51] The threat of remonopolization is not speculation, it is extrapolation – and the resulting losses in competition, efficiency and innovation pose a very real threat to the consumer and American economy. (Gillan Aff., ¶36).

Time is running out on the Commission's ability to salvage the competitive vision of the Telecommunications Act. At a minimum, the Commission should establish clear conditions that would prevent Ameritech Indiana from reducing any wholesale obligation in the future.

To make sure that this 271 review benefit Indiana consumers, AT&T recommends that the Commission order that each existing Ameritech wholesale obligation is a

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50 See Exhibit JPG-1, attached to the Affidavit of Mr. Gillan.

51 SBC announced a 29% long distance share in those states where it offers long distance service (even though it had been less than 1½ years since the first of those states, Texas, gained approval). SBC Reports 3rd Quarter Results, October 22, 2001. Verizon announced a 32% share of the New York market (Verizon Reports Solid 3rd Quarter 2001 Earnings). In contrast, at the end of 1996 (approximately 20 years after MCI first introduced its Execunet Service), MCI and Sprint together had 21.9% of the market. Source: *Long Distance Market Shares* (4th Quarter 1998), Federal Communications Commission, March 1999. SBC and Verizon continue to gain long distance share, with SBC now announcing a 35% market share in Texas (SBC 4th Quarter Results, January 24, 2002), while Verizon is the nation's fourth largest long distance company, with 7.4 million subscribers (Verizon Reports Solid 4th Quarter Earnings, January 31, 2002).

continuing obligation that Ameritech Indiana cannot reduce without the express approval of the Indiana Commission. Specifically, AT&T requests that the Commission:

* Expressly order that Ameritech Indiana may not withdraw any network element (or any other wholesale obligation) that it offers today (or, if its obligations expand, must provide as a result of state and federal 271 proceedings), without first petitioning this Commission and obtaining its approval; and

* Obtain Ameritech Indiana's agreement that this Commission has the authority to require additional unbundling in this State and its acceptance of the above condition. (Gillan Aff., ¶19).

The above administrative actions, however, only assure continuation of the status quo and do not correct for the fundamental problem – Ameritech Indiana's underlying incentive to evade and weaken the Act. This larger issue concerns the *future* when the Commission will no longer have Section 271 as a lever to press Ameritech to open its network to rivals – and to keep it open. The CLEC industry simply does not have the wherewithal to continue to wage withering litigation battles with incumbents that control customers, networks and revenues – and thus resources – far in excess of those of the entire CLEC community. The bottom line is that the Commission must both use the regulatory leverage of the Section 271 process to make sure that Ameritech is currently satisfying its full range of obligations, while at the same time making sure that the

Commission has the ability to resort to additional leverage in the future as Ameritech Indiana' strategic incentives inevitably reemerge. (Gillan Aff., ¶20).

To minimize this incentive, AT&T recommends that the Commission move forward in Cause No. 41988 by requiring that SBC file a plan of implementation to effect the permanent relief possible only through structural separation. It is not yet too late to take corrective action, but the Commission's role in the Section 271 process may be one of its final opportunities to address these fundamental concerns.

V. CONCLUSION

For all of the foregoing reasons, Ameritech Indiana's draft Section 271 informational filing is premature and deficient. The Commission should conduct further proceedings to evaluate Ameritech's compliance with Section 271 of the Act. AT&T looks forward to actively participating in such further proceedings.

Respectfully submitted,

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